IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2938 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 NO

B'NAGAR MUNI. NOKARIYAT SABHA

Versus

B'NAGAR MUNI. CORPN

Appearance:

1. Special Civil Application No. 2938 of 1987

MR SK JHAVERI for Petitioner No. 1

MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 22/03/2002

C.A.V. JUDGEMENT

1. This petition under Articles 226 and 227 of the Constitution seeks to challenge the award and order of the Industrial Tribunal, Rajkot in Reference (IT)

Nos.156/84, 239/84 and 255/84, whereby, most of the demands and disputes referred to the Tribunal were resolved in favour of the workmen. Therefore, the trade union of the workmen appears to have filed this petition for the limited additional relief of higher pay scales at par with the employees in the comparable categories in the main establishment of the respondent-Municipal Corporation and for advancing the date of application of the pay-scale.

2. The facts essential to grasp the limited controversy are that the petitioner union approached the respondent in the year 1979, inter alia, with the demand of regularising the service of about 92 employees employed in the Urban Malaria Scheme run by the respondent. It appears that initially, in the year 1978, the employees in the Urban Malaria Scheme were employed on casual and daily wage basis and were given regular breaks in service. Stating that the duties of such employees were of permanent nature and were same as or similar to those discharged by the employees on the regular establishment of the respondent, the demand for permanency and pay scales at par were raised and they were referred to the Industrial Tribunal. The defence of the respondent before the Industrial Tribunal was that the workmen concerned were employed at a stretch for only three months on the scheme which was limited for a period of five years and for which special grant was received from the Government. In view of the nature of work and duties, the employees were employed on daily wage basis specifically upon the work of the scheme and the criteria for their selection were not the same as that applied for regular recruitment on the establishment of the respondent. It was also the case of the respondent that in view of its poor financial condition, any burden which might be imposed upon it by an order to retrospectively regularise the service of the workmen concerned would be unbearable. Thus, the demands of the petitioner were resisted with the pleas that the workmen concerned were not doing the same work on the same establishment on the basis of the same qualifications and they could not be regularised on the permanent establishment of the respondent.

3. After recording and appreciating the evidence, the Tribunal reached to the findings of fact to the effect that the workmen concerned were employed on a special malaria scheme fully financed by the Government, wherein the pay scales of the employees employed were also prescribed by the Government; that the scheme was only for a limited period and that the employment of the

workmen concerned was on a footing entirely different from that of the employees employed on the main establishment of the respondent. As far as the payment of wages in the pay-scales prescribed by the Government under the scheme were concerned, it was found and held that the respondent ought to have adopted that pay structure and it had, in fact, adopted it with effect from 1.4.1983. It was also found and held that the financial condition of the respondent was likely to be adversely affected if the effect of the prescribed pay scales were to be retrospectively granted with effect from 1.3.1978 as demanded by the petitioner. However, in view of the demand having been raised for the first time on 13.8.1979 and the date of reference being 24.4.1980, the Tribunal has awarded the prescribed pay-scales with effect from 24.4.1980. The payment of arrears is also ordered alongwith the wages for the days on which the service of the workmen concerned was shown to have had breaks.

4. The two-fold argument of the learned senior counsel Mr.Jhaveri for the petitioner was that the pay scales prescribed by the Government under the scheme as far as it prescribed lesser wages than those prevailing in the establishment of the respondent were discriminatory and in violation of the principle of "equal pay for equal work" and the retrospective effect of the payment of wages in the prescribed pay scales should have been from the date of appointment of the workmen concerned, particularly when the scheme was fully financed by the Government and no burden was to be borne by the respondent. The learned counsel vehemently argued that duties and designations of the posts on which the workmen concerned were required to work in the Malaria Department of the respondent as well as under the scheme were almost identical and the scheme was also managed by the same employer. Under such circumstances, the respondent, being an institution of local self-government, could not have violated the letter and spirit of Article 14 of the Constitution by subjecting the workmen concerned to hostile discrimination in the matter of wages and pay scales. It was also vehemently argued that there was no justification for initially appointing the workmen on daily wage basis with regular breaks and denying them the wages in the pay scales prescribed by the Government under the scheme.

5. It appears from the record that the workmen concerned in the reference cases were initially appointed on temporary or ad-hoc basis to carry out certain functions of anti larval operations entrusted to the

respondent under a scheme made under the National Malaria Eradication Programme. Few temporary employees on the establishment of the respondent were also transferred to work under the scheme. The evidence or even contention conspicuous by its absence was that the workmen concerned had joined the service of the respondent by any regular mode of recruitment on the basis of qualifications or by undergoing any process of selection. Therefore, it cannot be gainsaid that the entry into the service of the respondent, the purpose for which the workmen concerned were employed, the conditions of service as also the qualifications and the procedure for selection adopted for the workmen concerned were all on a different basis. In such circumstances, the Tribunal was fully justified in recording the conclusion that the workmen employed under the scheme were on a footing entirely different from that of the employees in the same categories employed in the Malaria Department of the respondent. As far as advancing the date of effect of the award is concerned, the relevant evidence on record was to the effect that the workmen had worked for different number of days during the period from 1978 to 1982. It is not certain as to at which particular point of time which workmen had completed the service for any particular number of days. There was another award of the Tribunal in Reference (IT) No.88 of 1976 under which the workmen would be eligible to be made permanent after completing 720 days of service over a period of five years. A number of workmen even from the group of workmen concerned in the instant case were also granted the benefit of that another award and made permanent. However, even relaxing that standard in respect of the rest of the workmen, the Tribunal has already awarded the benefits of regularisation with effect from 24.4.1980 also disregarding the breaks in their service. Thus, in the background of the aforesaid facts and the findings arrived at, it is obvious that the workmen concerned already stood positively favoured by waiver of the condition of completion of 720 days of service for being granted pay scales and permanency. And, the Tribunal also considered the financial burden likely to be imposed upon the respondent by giving retrospective effect to the application of pay scales. As held by the Apex Court in SARWA SHRAMIK SANGH v. INDIAN HUME PIPE CO. LTD. [(1993) 2 SCC 386], whether in a given case relief should be granted with effect from a date anterior to the date of raising the dispute is a matter for the Tribunal to decide in the facts and circumstances of the case.

6. The learned counsel Mr.Jhaveri, relying upon SURINDER SINGH v. THE ENGINEER IN CHIEF, CPWD [AIR 1986

SC 584], submitted that the persons employed on daily wage basis were entitled to the same wages as other permanent employees in the department employed to do the identical work. Relying upon the judgment in DAILY RATED CASUAL LABOUR EMPLOYED UNDER P&T DEPARTMENT through BHARTIYA DAK TAR MAZDOOR MANCH v. UNION OF INDIA [AIR 1987 SC 2342], it was also submitted that denial of minimum pay in the pay scale of regularly employed workmen to casual labourers amounted to exploitation of labourers, and the condition of completion of 720 days of service was violative of Articles 14 and 16 of the Constitution. In the facts of that case, many of the workmen concerned had worked continuously for more than a year and some were engaged as casual labourers for nearly ten years and upon finding of their rendering the same kind of service as rendered by the regular employees, the Supreme Court was pleased to direct preparation of a scheme on a rational basis for absorbing the casual labourers who had continuously worked for more than one year. The judgment in U.P. INCOME-TAX DEPARTMENT CONTINGENT PAID STAFF WELFARE ASSOCIATION v. UNION OF INDIA [AIR 1988 SC 517] adopted the same line of reasoning with the same result. In DELHI MUNICIPAL KARMACHARI EKTA UNION v. P.L.SINGH [AIR 1988 SC 519], wherein the workmen concerned were recruited regularly and were working for a number of years, the Supreme Court was pleased to direct payment of minimum pay in the pay scale of regularly employed employees with effect from the date of reference. The learned counsel also relied upon the observations of the Supreme Court in JAIPAL AND OTHERS v. STATE OF HARYANA [AIR 1988 SC 1504] wherein it is observed that the doctrine of "equal work equal pay" would apply on the premise of similar work, but it does not mean that there should be complete identity in all respects. If the two classes of persons do same work under the same employer, with similar responsibility, under similar working conditions, the doctrine of "equal work equal pay" would apply and it would not be open to the State to discriminate one class with the other in paying salary. It is also observed that it was too late in the day to disregard the doctrine of equal pay for equal work on the ground of one employment being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee. In the facts of that case, the Supreme Court directed to fix pay of each of the petitioners with effect from the date of his initial appointment by ignoring the break in service on account of fresh appointments and further directed to implement the directions with effect from 1.9.1985, but rejected

the claim for regularising the services as, admittedly, the project of Adult and Non-formal Education Scheme was temporary.

6.1 Relying upon the recent judgment of the Supreme Court in SOUTH MALABAR GRAMIN BANK v. CO-ORDINATION COMMITTEE OF SOUTH MALABAR GRAMIN BANK EMPLOYEES' UNION [AIR 2001 SC 1028], it was submitted that any disparity between the two groups of employees, even though there might be a slight variation in the pay structure, could not be justified. The factual context was totally different and the ratio in the said judgment is wholly inapplicable in the facts of this case. The learned counsel also relied upon a judgment of the Full Bench of Punjab & Haryana High Court in VIJAY KUMAR AND OTHERS v. STATE OF PUNJAB [2002 (1) SLR 694] to submit that the doctrine of "equal pay for equal work" applied to the workmen working on daily wages or part-time basis also if they were performing same functions as regular employees and such workmen were entitled to the minimum of the pay scale. In the facts of that case, there was no dispute about the fact that the petitioners were performing the same work which their counter-parts/regular employees in the same department were performing and the petitioners did not lack essential qualifications. Answering the reference in the positive, the Full Bench noted, after analyzing the consistent judicial pronouncements of the Supreme Court, the following conditions precedent to the application of the doctrine of equal pay for equal work; although with the caveat that they were not a straight-jacket formula applicable per se universally and that the relief to be granted would have to be considered in light of the facts and circumstances of each case. The essential conditions culled out were as under:

"a. The petitioners ought to be employed by the State as casual or daily rated workers;

b. The employee ought to have worked as such for a fairly reasonable time satisfying the ingredients of continuity in service;

c. The functions being discharged and work being performed by such employee should be similar (of course, not by mathematical formula), as that being done by a regular employee of the same department; and

d. Work performance of the employees should

be satisfactory."

7. The learned senior counsel for the respondent Mr.J.R.Nanavati relied upon the recent judgment of the Supreme Court in GOVERNMENT OF A.P. AND OTHERS v. V. VEERA RAGHAVAN [AIR 200 SC 3440] wherein, in a different context, it is observed that equal pay for equal work does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service.

8. As seen earlier, in the facts of the present case, the workmen concerned were admittedly and specifically employed on a scheme which also prescribed the pay scales. Parity with the pay scales prevailing in the main establishment of the respondent could not have been awarded because of the important distinguishing features viz. qualifications, source of recruitment, nature of duties etc. As for advancing the date of giving effect to the pay scales prescribed by the Government, the Tribunal has relied upon the relevant considerations of continuity of service and financial burden upon the employer. None of the judgments cited in support of the petitioners' case categorically ordains that parity on the basis of the principle of "equal pay for equal work" has to be granted from the date of initial employment. Particularly in the facts of the present case, where the initial appointments of the workmen concerned appears to be on ad-hoc and fixed term basis without following any procedure of selection or recruitment, it would have been unfair and unjust to practically order regularization from the date of initial appointment. In such cases, continuity of service evidenced by the number of days worked would be an important criterion and the workmen concerned were positively benefitted in that regard insofar as the standard of 720 days of work adopted in the establishment of the respondent was discarded in favour of the workmen.

9. In the facts and for the reasons discussed hereinabove, the impugned award requires no interference by this Court in exercise of its extraordinary writ jurisdiction and hence the petition is dismissed. Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)